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Subject: Obstruction impact to OSHA
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Good Morning, Chris.

This message is to clarify why it's important for companies and individuals to be truthful during OSHA inspections. (Or any other Agency proceeding)

An OSHA Compliance Officer conducts several fact finding activities during inspections including interviews, document requests, and photographs. This is to uncover the truth and determine if the OSH Act has been violated. In the Compliance Officer's mind, and later described in a report, he/she is investigating hazards, exposures, and employer knowledge – the basic elements of a violation. With correct information, the Area Office may or may not issue citations depending on if basic elements are present. The Compliance Officer and Area Office managers consider several other complexities like the Appropriations Act, affirmative defenses, internal directives, etc. Through this process of conducting inspections and issuing citations, OSHA fulfills its purpose as intended by the OSH Act to ameliorate American workplaces.

The ideal conduct of a company and individuals during an inspection is full cooperation. From my experience, this is the most common scenario. The Compliance Officer asks a question and the interviewee gives an answer. The Compliance Officer requests documents and it shows up the next day in an email message. It's usually simple to piece together information and understand if a violative condition exists with truthful information. I've been on inspections in the oilfield where a company chooses a person to be "storyteller" to walk me through the event, voluntarily. With this level of cooperation, inspections are quick, thorough, and effective. Large oil and gas companies including Whiting, Pioneer, and Secure Energy (to name a few) fully cooperate during inspections. Full cooperation is the norm in North Dakota.

Some companies do not fully cooperate with inspections, but also do not provide false information. Rarely, a company will only respond to subpoenas and warrants. OSHA supports employer rights and accepts that extra steps may be necessary to fact find in these cases.

Sometimes companies and individuals flat out lie to Compliance Officers. Maybe they want to protect their peers or the company, have fear of government, or disdain of government. There could be many reasons. Some lies are easy to catch. For example, roofers may say that they were wearing fall protection when they weren't. A Compliance Officer may ask to see the harness in this case and the interviewee doesn't know where it is...or it's in the floor of the truck under a bunch of junk. In such a case, the person usually comes clean. "Okay, I wasn't wearing it." We were trained to press when information was not believable. Often with pressure, the real story comes out.

NOTE: While I was working at OSHA, Compliance Officers from the North Dakota office were trained in interviewing techniques by the DOL Solicitors Office. In part, this training included techniques to probe for the truth.

In more extreme cases of dishonesty, a company or individuals may conspire by "getting their story straight" with a mixture of facts and lies. The Compliance Officer has to get deep enough in the facts to determine what's true and what's a lie. That's if he/she can ever get to that point. It

can be very difficult and time intensive to conduct these kinds of inspections. Plus there's more room for error.

These are some of the impacts of inspection obstructionism:

1. More spending of public money to for extra effort on inspections
 - a. Travel to the site multiple times
 - b. Salaries for Compliance Officers, Solicitors, and Managers
 - c. Litigation cost
2. Fewer inspections because the Compliance Officer has to spend time concluding what's true/untrue. Ultimately fewer inspections means less enforcement and less safe workplaces.
3. Ties up resources such as trucks, recorders, gas monitors, etc. If these are used to investigate untruths, they can't be used elsewhere.
4. If the lie goes unnoticed, improper application of the OSH Act and violators may not be held accountable. A citable condition may not be cited.

Let me know if you have any questions.

Thank you,

Kevin McElvany, CSP

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